

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.1062 of 2009

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Bihar State Housing Board, 6 Mangles Road, Patna, through its Managing Director.

.... Judgment Debtor/Petitioner/s

Versus

1.Harendra Nath Kapoor, son of Late Surendra Nath Kapoor.

2.Rupesh Kapoor.

3.Randhir Kapoor

4.Rishi Kapoor, all sons of Sri Harendra Nath Kapoor.

5.Anamika Kapoor, wife of Sri Jagdish Kapoor

6.Gunjan Dhawan wife of Sri Pankaj Dhawan

All residents of LIG 75 Saheed Bhagat singh Road, Mustafabad, P.s. Rampur,
District Gaya.

....Decree Holders/Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Anshuman Singh, Adv with Sriram Krishna,
Adv

For the Respondent/s : Mr. Sanjay Kumar, Adv

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 09-09-2016

This matter has been placed under the heading 'To Be
Mentioned' at the instance of the Opposite Parties on the basis of
submission that earlier this civil revision application was referred to
a larger bench for determination of the two questions as mentioned
in the order of reference and as now those questions have been
answered by the division bench, therefore, this revision application
can be disposed of at this stage itself in view of the decision of the

division bench.

Heard learned counsel for the parties.

The facts in detail require no notice in view of the limited nature of controversy now remaining and suffice it to state that after passing of the arbitral award, the Execution Case No. 4 of 2007 has been filed by the opposite parties under Section 36 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the 'Arbitration Act, 1996') before the court of learned District Judge , Patna which has been eventually assigned to the court of Additional District Judge IV, Patna for hearing and disposal. A petition under Section 34 of the Arbitration Act, 1996 for setting aside the said award was filed by the petitioner before the court of Sub-Judge-1, Patna which has been registered as Miscellaneous Case No. 14 of 2007.

The petitioner raised objection in the execution case No. 4 of 2007 that in view of the provision as envisaged under Section 36 of the Arbitration Act, 1996, the execution of the award could have been undertaken only after the disposal of the prayer for setting aside the award as made under Section 34 of the Arbitration Act, 1996 and the execution proceeding was thus premature. Another objection was also raised with regard to the jurisdiction of the court as well on the base that the court of District Judge was not

the competent court under the said Act for enforcing the award. By the impugned order the learned court below has overruled the objections as raised by the petitioner and has directed the execution case to proceed further.

The revision application has thus been filed before this Court and by order dated 18.02.2011, the following two questions have been referred for determination by the larger bench:-

"(I). For deciding the issue of setting aside the arbitral award under Section 34 of the Act, the competent court in terms of definition of "Court" engrafted under Section 2(1)(e) of the Act would be the District or Additional District Judge of the concerned Civil Court or the Subordinate Judge having the pecuniary and territorial jurisdiction.

(II). Whether the Principal Civil Court of original jurisdiction as per the definition of "Court" under Section 2(1)(e) of the Act is the competent to enforce the award under Section 36 of the Act or the concerned court having the pecuniary and territorial jurisdiction in terms of Section 37 of Code of Civil Procedure would be the competent court to proceed with the execution case."

Thereafter by order dated 28.04.2016 a bench of this Court observing that as the referred questions have already been answered by a decision of this Court in the case of **Shivam Housing Pvt. Ltd & Anr vs Thakur Mithilesh Kumar Singh & Ors** 2015(3) PLJR 876, has directed this revision application to be

placed before appropriate bench for disposal in accordance with law in the light of the decision in the case of **Shivam Housing Pvt. Ltd.(supra)**.

In **Shivam Housing Pvt. Ltd.(supra)**, a bench of this Court has held that in the State of Bihar, the principal Civil Court of original jurisdiction as envisaged under Section 2(1)(e) of the Arbitration Act, 1996 is the court of District Judge which may also include Additional District Judge.

Learned counsel for both the parties have jointly submitted that in accordance with the law laid down in the case of **Shivam Housing Pvt. Ltd.(supra)** and also the course followed in the said case, the revision application may be disposed of with direction for transfer of the Miscellaneous Case No. 14 of 2007, pending before Sub-Judge-1, Patna to the Court of learned District Judge and accordingly, a further direction may also be issued that the said Miscellaneous Case No. 14 of 2007 and the Execution Case No. 04 of 2007/01 of 2008 be placed before the same court which shall proceed with the execution case after the disposal of the Miscellaneous Case No. 14 of 2007 in accordance with law.

In view of the stand taken on behalf of both the parties and also in view of the bench decision in **Shivam Housing Pvt. Ltd.(supra)**, this court finds no legal impediment in accepting the

above joint prayer on behalf of the parties in order also to avoid multiplicity of the proceedings and prolongation of the litigation.

Accordingly, this revision application is allowed and the impugned order is set aside. It is directed that the proceeding of the Execution Case No. 4 of 2007/1 of 2008 shall be taken up after the disposal of the Miscellaneous Case No. 14 of 2007 in accordance with law. It is further directed that the Miscellaneous Case No. 14 of 2007 pending before Sub Judge-I, Patna shall now be transferred to the court of learned District Judge, Patna who shall either deal with the same himself or transfer it to appropriate court of Additional District Judge, for hearing and disposal as early as possible and preferably with three months of the production/receipt of this order. The parties are directed to avoid unnecessary adjournments and cooperate in disposal of the matter in accordance with law.

The revision application is, accordingly, allowed with direction.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	19.09.16
Transmission Date	N.A.